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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/079,388 | 02/20/2002 | J. David Carlson | IR-2881(EV) | 8462 |

7590

04/24/2003

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EXAMINER

BUTLER, DOUGLAS C

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 2/20/02, 4/15/02

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire thirty (30) days ~~thirty days~~, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-35 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No.(s) _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Art Unit: 3683

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: embodiment labeled 130a of Fig. 3a;

Species B: embodiment labeled 130b of Fig. 3a;

Species C: embodiment labeled 130c of Fig. 3b;

Species D: embodiment labeled 130d of Fig. 3b;

Species E: embodiment labeled 130e of Fig. 3b;

Species F: the non-illustrated embodiment of the "centrifuge" as per claim 5;

Species G: Fig. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims is considered to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. The drawings are objected to under 37 CFR 1.84(h)(5) because figures 3a, 3b ^{show modified} forms of construction in the same view. A proposed drawing correction or corrected drawings are required in due course.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. Comments Intended To Advance Prosecution:

A. There are no clear antecedent bases for numerous elements referenced to in the claims. For example, there are no clear antecedent bases in the claims for "the ... damper" of claim 1, lines 4-5, claim 20, lines 4-5, claim 29, line 2; "the moving member" of claim 1, last line, claim 29, line 6; "the device" of line 1 of claims 2-5; "the signal generating device" of line 1 of claims 17-19; "the plates" of claim 24, line 2; "the damper" of claim 32, line 1; "said damper" of claim 33, line 6; "the storage means" of claim 28, line 1, etc.

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B. Claim 8, last line, a period should be added after "powder".

C. Each of the independent claims recites continued vibration control in the event of power loss. See DE 3724361 to Herberg which discloses damping means of the field controllable medium type with continued damping in the event of power loss through a back-up fixed supply which signals the damping means. The examiner will forward a translation of DE 3724361 when obtained.

D. Wulff et al (5632361) discloses a field responsive damper with damping through a permanent magnet upon loss of power. See instant claim 33.

E. In Oliver et al (6419057), damping continues during loss.

5. The proposed drawings filed April 15, 2002 have been received.

6. The prior art filed February 20, 2002 has been considered.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Butler whose telephone number is (703) 308-2575. The examiner can normally be reached on Monday to Friday from 5:30 a.m. to 2 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Lavinder, can be reached on (703) 308-3421. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

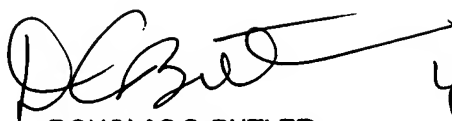
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Butler/kn

April 17, 2003



DOUGLAS C. BUTLER
PRIMARY EXAMINER

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4/19/03